

Appendix A

Draft

State of California
The Resources Agency
Department of Water Resources

Amendment to Water Supply Contract Between the State of California Department of Water
Resources and [Name of State Water Contractor]¹

THIS AMENDMENT to the Water Supply Contract is made this ____ day of _____, 1998, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the “State,” and [Name of State Water Contractor], herein referred to as the “[Agency].”

-
1. The following amendments are being considered in this Initial Study. Proposed additions to the existing long-term water supply contracts are indicated with underlines while text proposed for deletions are shown with strikeouts.

RECITALS:

WHEREAS, the State and the Agency have entered into and subsequently amended a water supply contract providing that the State will supply certain quantities of water to the Agency, and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payment; and

WHEREAS, the State and the Agency have entered into the Monterey Amendment to the water supply contract;

NOW THEREFORE, IT IS MUTUALLY AGREED that the following changes and additions are hereby made to the Agency's water supply contract with the State:

1. Amend Article 7(a) to read:

(a) Changes in Annual Entitlements

(1)The Agency may, at any time or times during the term of this contract, by timely written notice furnished to the State, request that project water be made available to it thereafter in annual amounts greater or less than the annual entitlements designated in Table A of this contract. Subject to approval by the State of any such request, the State's construction schedule shall be adjusted to the extent necessary to satisfy the request, and the requested increases or decreases in said annual entitlements shall be incorporated in said Table A by amendment thereof. Requests for changes in annual entitlements for more than one year shall be approved by the State: Provided, That no change shall be approved if in the judgment of the State it would impair the financial feasibility of project facilities or the financial integrity of the project.

(2)Without further limiting the total amount of entitlement reductions that may be made under subdivision (a)(1) of this article, reductions in Table A annual entitlements approved by the State and included in the Table A Reduction Charge authorized by Article 22(k) shall be subject to the following additional limitations:

(i)Total reductions of annual entitlements for all contractors shall not, in any given year, exceed 120,000 acre-feet. If the State receives timely requests for reductions in excess of 120,000 acre-feet, the pending reductions for each year requested shall be prorated, up to the amount of the request, based upon the ratio of the requesting contractor's maximum annual entitlement to the total maximum annual entitlements of all requesting contractors, excluding from both numbers entitlements purchased pursuant to Article 53. The State shall afford the Agency an opportunity to request a reduction in annual entitlements of at least 2,000 acre-feet prior to the time that requests totaling 120,000 acre-feet are first approved.

(ii)The Agency's request for reductions shall not exceed 50,000 acre-feet for any one year.

(iii)The reduction in annual entitlement must be for a minimum of five years and shall not vary in amount by more than 10 percent per year cumulatively during the first five-year period, based on

the initial year's reduction amount. After approval, the annual entitlement for the first five years of the schedule shall not be changed.

iv. The State shall develop and disseminate to the contractors a schedule for making and approving requests pursuant to this subdivision (a)(2).

2. Amend Article 12(f) to read:

(f) The priorities listed in this subdivision shall not be applied to the extent such application would reduce project water supplies available for use in and above, and for export from, the Delta. Each year water deliveries to the contractors shall be in accordance with the following priorities to the extent there are conflicts. To the extent there are conflicts in contractors' deliveries through project transportation facilities in which they participate in repayment, deliveries shall be in accordance with the following priorities:

First, project water, including Pool purchases pursuant to Article 56(d), to meet scheduled deliveries of contractors' annual entitlements for that year, delivered within the maximum monthly delivery rates provided for in their contracts.

Second, interruptible water to the extent contractors' annual entitlements for that year, delivered within maximum monthly delivery rates provided for in their contracts, are not met by the first priority.

Third, project water to fulfill delivery requirements pursuant to Article 14(b).

Fourth, project water previously stored pursuant to Articles 12(e) and 56, delivered within the maximum monthly delivery rates provided for in their contracts.

Fifth, nonproject water to fulfill contractors' annual entitlements for that year, delivered within the maximum monthly delivery rates provided for in their contracts, to the extent such annual entitlements are not met by the first two priorities.

Sixth, project and nonproject water, for deliveries to those contractors who have agreed to pay both retroactively and prospectively the charges required by Article 53(k) for entitlement purchases, up to the amount of purchased entitlement for that year and within the maximum monthly delivery rates used in such payment determinations.

Seventh, project and nonproject water for deliveries to those contractors who have agreed to pay prospectively only the charges required by Article 53(k) for entitlement purchases, up to the amount of purchased entitlement for that year and within the maximum monthly delivery rates used in such payment determinations.

Eighth, additional interruptible project water deliveries to contractors in excess of their annual entitlements for that year, or in excess of the maximum monthly delivery rates provided for in their contracts.

Ninth, additional nonproject water deliveries delivered to contractors in excess of their annual entitlements for that year, or in excess of the maximum monthly delivery rates provided for in their contracts.

If all deliveries requested within any of the priorities, except priorities six and seven, can-

not be made, deliveries to those contractors so affected shall be scheduled in proportion to those contractors' then present maximum annual entitlements, excluding entitlements permanently transferred pursuant to Article 53 for which charges are required pursuant to Article 53(k).

If all deliveries requested within either priority six or seven cannot be made, deliveries to those contractors so affected shall be scheduled in proportion to their increases in the maximum annual entitlements resulting from purchases by those contractors. Deliveries for which a use of facilities fee is charged shall be made only if all deliveries in the priorities listed in this subdivision (f) are not adversely impacted.

3. Amend Article 18(f) to read:

Neither the State nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to the Agency under this contract caused by application of the priorities in Article 12(f) or by drought, operation of area-of-origin statutes, or any other cause beyond its control.

4. Amend Article 21(b) to read:

For any interruptible water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs, which would not be incurred if interruptible water were not scheduled for or delivered to the contractor. ~~Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.~~ A use of facilities charge for a contractor's use of project facilities for the delivery of interruptible water shall be imposed whenever such fee would be charged for delivery of other project water.

5. Add a new subdivision (k) to Article 22 to read:

(k)(1) In any year beginning with the year 2000 if the State, pursuant to the review conducted under Article 51(c), determines that requests for reductions of Table A annual entitlements pursuant to Article 7(a)(2) cannot be approved without adversely affecting other State obligations, including those in Article 51(c), the State may add to the Agency's annual statement of charges a charge denominated "Table A Reduction Charge." The Table A Reduction Charge shall be the amount required to recover revenue shortfalls resulting from reductions in Table A annual entitlements pursuant to Article 7(a)(2). The Table A Reduction Charge shall be allocated among those contractors having this Article 22(k) in their contracts in proportion to their Table A annual entitlements for that year, and shall be collected in the manner and on the same terms and conditions as other charges under this contract.

(2) In any year in which a Table A Reduction Charge has been added to an Agricultural Contractor's statement of charges, such Table A Reduction Charge may, upon the contractor's request, be treated as reducing by up to but not exceeding an equal amount the obligation of such contractor for that year to make payments into the Agricultural Rate Management Trust Fund. To the extent that such contractor has already made payments to the trust fund in an amount in excess of such contractor's reduced trust fund payment obligation, such contractor may request the trustee to use the excess from the trust fund to pay the Table A Reduction Charge. This subdivision 22(k)(2) shall be effective only if the Agricultural Rate Management Trust Fund Agreement is amended to conform to this subdivision.

6. Add Article 30 to read:

A contractor shall be charged a use of facilities charge, as determined by the State, only for use of those project transportation facilities for which it is not participating in repayment.

7. Amend Article 51(f)(2)(ii) to read:

51(f)(2)(ii) The transportation capital cost component repayment obligations, for purposes of this Article 51(f), shall be based in the year of recalculation on the then most recent Department of Water Resources Bulletin 132, Table B-15, "Capital Cost Component of Transportation Charge for Each Contractor," or its equivalent, excluding any costs or entitlement associated with transfers of entitlement from Agricultural Contractors pursuant to Article 53, except that for purposes of this subdivision, no facilities involving the addition of new capital costs associated with any project not using the project interest rate shall be added to the computation other than the Coastal Extension and the East Branch Extension Phases 1 and 2.

8. Add Subdivision (h)(4)(iv) to Article 51 to read:

In addition to the provisions of subdivision (h)(4)(ii) of this article, if on or before June 30 of any year in which Tulare has not previously made a request to the Trustee, any of the irrigable land within Tulare has been flooded in that year or is flooded and Tulare in writing requests the Trustee to do so, the Trustee shall, to the extent there are funds in Tulare's account, distribute to the State from such account for the benefit of Tulare an amount equal to the percentage of the total of Tulare's statement of charges for that year, as redetermined by the State on or about May 15 of that year for (a) the Delta Water Charge, (b) the capital cost and minimum components of the Transportation Charge (including off-aqueduct power charges), and (c) the Water System Revenue Bond Surcharge, that is equal to the percentage of the irrigable land within Tulare that was flooded or not timely planted due to flooding prior to June 30 of that year. This subdivision (h)(4)(iv) shall be effective only if the Agricultural Rate Management Trust Fund Agreement is amended to permit the distributions provided for herein.

9. Amend Article 53 by amending 53(f), 53(g), 53(h) and by adding 53(k)

53(f) Upon the effective date of any such transfer, the seller shall be relieved of and the buyer shall become liable to the State for all prospective Delta Water Charges, the related Transportation

Charges and any other charges for the annual entitlements and associated transportation rights transferred unless the seller and buyer provide otherwise in the contract for the transfer and the State approves such other provisions. However, the contractor making the sale shall remain obligated to the State to make the payments if the buyer defaults on its payments to the State related to the water transferred and is not a party to a long term water supply contract of the type contained in Department of Water Resources Bulletin Number 141. If the contractor making the sale is required to make any payments to the State as a result of the buyer's default, the entitlement transferred to the defaulting buyer shall, if provided for in the Proposed Contract, revert back to the contractor making the sale. The buyer may also be liable for any charges imposed pursuant to subdivision ~~(g)~~ (k) of this article. All payments received by the State from the seller relating to the annual entitlement sold shall be deemed to have been received from the buyer contractor. Any charges attributable to the purchase shall begin January 1 of the year following the effective date of the transfer.

53(g) A contractor which is a buyer of annual entitlement pursuant to this article may receive deliveries using any portion of the capacity previously provided by the State in each reach of the project transportation facilities for such contractor that is necessary for transporting the entitlement purchased by it on the same basis as any other entitlement provided for in its Table A in effect prior to the date of the Monterey Amendment. Such contractor may also use any transportation rights transferred to it by a seller in the same manner as the seller was entitled to use them. Such contractor may also use its excess capacity, any purchased excess capacity, and any newly constructed facilities paid for by the contractor, necessary for transporting the entitlement purchased by it on the same basis as any other entitlement provided for in its Table A in effect prior to the date of the Monterey Amendment. Purchased entitlement delivered in the reaches specified in this paragraph shall be treated as annual entitlement for purposes of delivery priorities in Article 12(f).

~~and any unused capacity in any of the reaches specified in this paragraph so long as project operations and/or priority of service of water to other contractors participating in repayment of capital costs in such reaches is not adversely affected. The capital cost and minimum, operation, maintenance, power and replacement components of the Transportation Charge allocated to a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach shall be determined prospectively based upon the increase in the buying contractor's annual entitlement resulting from the purchase, and service of water to fulfill annual entitlement to other contractors shall not be impaired. The capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charges shall then be reallocated among the other entities participating in repayment of costs of that reach. For the purposes of this determination, all payments received by the State from the seller relating to the annual entitlement sold shall be deemed to have been received from the buying contractor. Any increased Transportation minimum operation, maintenance, power and replacement component charges allocated to the buying contractor pursuant to this subdivision (g) shall begin January 1 of the year following the effective date of the transfer~~

53(h) Individual contractors may transfer entitlements among themselves in amounts in addition to those otherwise provided for in this article. The State shall expeditiously execute any necessary documents and approve all contracts involving permanent sales of entitlements among con-

tractors, including permanent sales among Urban Contractors. Such sales shall be subject to the provisions of subdivisions (b), (f) and (g) and (k) of this article; ~~Provided, however, that for a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach, reallocation of the Transportation capital cost component charges for transfers other than (i) the 130,000 acre-feet provided for in this article and (ii) the approximate 33,000 acre-feet of transfers proposed from contractors located in Santa Barbara or San Luis Obispo counties, shall be determined both prospectively and retroactively.~~

53(j) [Reserved for future use]

53(k)(1) Subject to the conditions set forth in subdivision (k) of this article, a contractor purchasing entitlement under subdivisions (a) or (h) of this article needing transportation capacity in excess of the capacity factors on which its charges are based in any reach may take delivery of its purchased entitlement from those project transportation facilities at the same maximum monthly delivery rates provided for in its contract prior to the purchase. The State shall not be responsible for any resulting adverse impacts upon its ability to provide such contractor peaking capacity. On January 1 of the year following the effective date of the transfer, the buyer shall become liable to pay an amount substantially equivalent to the prospective capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge for each reach specified in this subdivision (k)(1) through which the purchased entitlement will be delivered. In addition, the buyer contractor shall pay to the State the proportionate share of the prospective Water System Revenue Bond Surcharge associated with the purchased entitlement. Except as provided in subdivision (k)(2) of this article, a contractor shall also pay retroactively the capital cost component of the Transportation Charge and, as determined by the State, the proportionate share of the retroactive Water System Revenue Bond Surcharge associated with the purchased entitlement.

(2) If transportation capacity in excess of the capacity factors on which its charges are based in any reach are required for a contractor purchasing a portion of the 130,000 acre feet of entitlement described in subdivision (a) of this article or a portion of the approximate 33,000 acre feet of transfers proposed by contractors located in Santa Barbara or San Luis Obispo Counties, prior to the purchase, or as soon thereafter as possible if the purchase occurred prior to this amendment, the buyer contractor shall make a one-time election whether or not to pay retroactively the applicable capital cost component of the Transportation Charge and, as determined by the State, the applicable Water System Revenue Bond Surcharge in addition to the prospective charges described in this subdivision (k)(1) of this article. For a contractor purchasing entitlement other than (i) the 130,000 acre-feet provided for in subdivision (a) of this article and (ii) the approximate 33,000 acre-feet of transfers proposed from contractors located in Santa Barbara or San Luis Obispo counties, if transportation capacity in excess of the capacity factors on which its charges are based in any reach are required, reallocation of the Transportation capital cost component charges for transfers shall be determined both prospectively and retroactively and the buying contractor may not elect to pay prospectively only.

(3) Contractors charged retroactively pursuant to subdivision (k)(2) of this article shall be entitled to receive delivery of that water under a priority higher than a contractor paying prospectively only, as provided in Article 12(f).

(4) The charges as determined by the State and imposed under subdivision (k)(1) of this article shall be collected in the same manner and on the same terms and conditions as the Transportation Charge and the Water System Revenue Bond Surcharge. Notwithstanding the foregoing, and notwithstanding Article 28(f) and Article 50(d), the retroactive Water System Revenue Bond Surcharge payments referred to in subdivision (k) of this article may be paid on an amortized basis as described in Article 28(e). The Transportation Charges collected under this subdivision shall be proportionately credited to the other contractors participating in repayment of the reaches. The retroactive Water System Revenue Bond Surcharges collected under subdivision (k) of this article shall be proportionately credited to all contractors who paid those Water System Revenue Bond Surcharge amounts.

(5) A contractor which purchased entitlement between 1980 and 1994, and also purchases entitlement after October 1, 1998 and elects to pay the applicable charges retroactively as provided in subdivision (k)(2) of this article for the purchase of a like amount of purchased entitlement after October 1, 1998, shall be entitled to receive deliveries of that amount on the same priority as the newly purchased entitlement under subdivision (k)(2) of this article.

10. Add subdivision (h) to Article 54:

Notwithstanding any provisions of subdivision (a) of this article to the contrary, the collective Maximum Allocation for Castaic Lake shall be increased from 160,000 acre-feet by an amount not to exceed three percent (or 4,800 acre-feet) when and if the Castaic Lake Water Agency becomes contractually committed for entitlement purchased subsequent to October 1, 1998 to pay retroactively and prospectively pursuant to Article 53(k) for delivery capability in each reach through which such purchased entitlement will be conveyed downstream from the seller's reaches; Provided, that the amount of such purchased entitlement equals or exceeds the amount of entitlement purchased by the Castaic Lake Water Agency between 1980 and 1994. Any increase in the collective Maximum Allocation shall serve to increase only the Maximum Allocation of the Castaic Lake Water Agency. The Maximum Allocations of the other contractors participating in the repayment of Castaic Lake, as specified in subdivision (a) of this article, shall remain unchanged.

The amount of the increased collective Maximum Allocation shall be determined by the State based on revised proportionate use factors for Castaic Lake in accordance with the following formula:

Increased Collective Maximum Allocation (Acre-feet) =

153,940 + 1.376 Acre-feet

1 – X

where X = Revised proportionate use factor for Castaic Lake Water Agency for Castaic Lake.

The State's revision of proportionate use factors for Castaic Lake shall be based on (I) the amount of the purchased entitlement for which payments are made retroactively and prospectively pursuant to Article 53 (k)(2) and (ii) the amount of regulatory and emergency storage both for such purchased entitlement and for entitlement purchased between 1980 and 1994, for which payments are made retroactively and prospectively. The amount of storage included in such payment determination shall be available for deliveries to the Castaic Lake Water Agency, and the regulatory storage available for deliveries to The Metropolitan Water District of Southern California shall be reduced by a corresponding amount.

This subdivision (h) shall not impact the capability of meeting contractual requirements for deliveries or emergency storage to the Ventura County Flood Control and Water Conservation District, and shall not impact the emergency storage available to The Metropolitan Water District of Southern California. This subdivision (h) is not intended to and shall not serve as precedent for any further expansion of the Maximum Allocation.

11. Amend Article 55 to read:

Subject to ~~the delivery priorities in~~ Article 12(f), contractors shall have the right to receive services from any of the project transportation facilities to transport water procured by them from nonproject sources for delivery to their service areas and to interim storage outside their service areas for later transport and delivery to their service areas: *Provided*, that except to the extent such limitation in Section 12931 of the Water Code be changed, a contractor shall not use the project transportation facilities under this option to transport water the right to which was secured by the contractor through eminent domain unless such use be approved by the Legislature by concurrent resolution with the majority of the members elected to each house voting in favor thereof.

(b) For any nonproject water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conservation and transportation of such water as if such nonproject water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, which may include an administrative or contract preparation charge, all as determined by the State. Incremental costs shall mean those nonpower costs, which would not be incurred if nonproject water were not scheduled for or delivered to contractors. ~~Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for the delivery of nonproject water from or through that reach.~~ A use of facilities charge for a contractor's use of project facilities for the delivery of nonproject water shall be imposed whenever such fee would be charged for delivery of project water. Costs for transporting water placed into interim storage shall be paid in the same manner provided for in Article 56(c)(6).

12. Amend Article 56(c)(6) to read:

For any project water stored outside its service area pursuant to this subdivision (c), a contractor shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the contractor pays for the transportation of annual entitlement to the reach of the project transporta-

tion facility from which the water is delivered to storage. If annual entitlement is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the contractor shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of return to the aqueduct to the turn-out in the contractor's service area. In addition, the contractor shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the contractor's service area instead of to interim storage outside the service area. ~~Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.~~ Notwithstanding Article 30, a use of facilities charge for a contractor's use of project facilities for the delivery of water to, or return of water from, interim storage shall be imposed only if neither the contractor for whom the water is stored nor the contractor storing the water has participated in the repayment of such project facilities.

13. Amend Article 56(d)(7) to read:

For any water delivered from the Pool to contractors, the buyer shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs that would not be incurred if such water were not scheduled for or delivered to the buyer. ~~Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of such water from or through the reach.~~ A use of facilities charge for a contractor's use of project facilities for the delivery of Pool water shall be imposed whenever such fee would be charged for delivery of other project water. Adjustments from estimated to actual costs shall be computed by the State pursuant to these provisions and shall be paid by the buyer or credited to the buyer at the times and interest rates described in Article 28(c).

14. Amend Article 56(f) to read:

Nothing in this article shall be deemed to prevent the ~~District~~ Agency from entering into bona fide exchanges of project water for use outside the ~~District's~~ Agency service area with other parties for project water or nonproject water if the State consents to the use of the project water outside the ~~District's~~ Agency service area. Also, nothing in this article shall be deemed to prevent the ~~District~~ Agency from continuing those exchange or sale arrangements entered into prior to September 1, 1995, which had previously received any required State approvals. A "bona fide exchange" shall mean an exchange of water involving a contractor and another party where the primary consideration for one party furnishing water to another is the return of a substantially similar amount of water, after giving due consideration to the timing or other nonfinancial conditions of the return.

Reasonable payment for costs incurred in effectuating the exchange and reasonable deductions from water delivered, based on expected storage or transportation losses may be made. A "bona fide exchange" shall not include a transfer of water from one contractor to another party involving a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether transfers of water constitute "bona fide exchanges" within the meaning of this paragraph and not disguised sales.

Notwithstanding Article 30, a use of facilities charge for a contractor's use of project facilities for delivery or return of exchange water shall be imposed only if neither contractor participating in the exchange has participated in repayment of such project facilities.

15. Any use of facilities fee charged prior to this amendment for interim storage under Article 56(c)(6) shall be credited back to the contractor that paid such fee if the storing contractor participated in repayment of the reaches used.

16. Effective Dates and Phase-In

(a) This amendment and similar amendments to other contractors' water supply contracts shall not take effect unless on or before December 31, 1999, such amendments have been executed by the State and by contractors collectively holding a minimum of 3,755,500 acre-feet in maximum annual entitlements. Such amendments shall become effective on the date they are executed by the State.

(b) The State shall administer the water supply contracts of any contractors that do not execute this amendment so that such contractors are not affected adversely or, to the extent feasible, beneficially by these amendments of other contractors' water supply contracts.

(c) If a court of competent jurisdiction issues a final judgment or order determining that any part of this amendment or the Monterey Amendment to any contractor's water supply contract is invalid or unenforceable, all provisions of that amendment shall be of no force or effect as to such contractor, except as provided in subdivision (e) of this paragraph.

(d) If any part of this amendment or the Monterey Amendment of the Kern County Water Agency's or The Metropolitan Water District of Southern California's contracts is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, this and similar amendments to other contractors' water supply contracts shall be of no force and effect.

(e) The total invalidity or unenforceability of one contractor's amendment as provided for in subdivision (c) of this paragraph or of all contractors' amendments as provided for in subdivision (d) of this paragraph may be avoided only if such invalidity or unenforceability is explicitly waived in writing signed by the State, Kern County Water Agency and The Metropolitan Water District of Southern California, and such waiver shall not be unreasonably withheld. In cases arising under subdivision (c) or (d), the affected contractor whose amendment has been determined to be partially invalid or unenforceable must first request the waiver.

